



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149621

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on June 25, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency has given proper notice for a case closure for lack of acceptable response to a request for verification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. The agency became aware that there could be other insurance available for Petitioner and her children via the children's father, [REDACTED], and that he was living in the home. His income was also attributable to the household.
3. The agency sent Petitioner a written request for verification date May 23, 2013 that sought information as to household composition. Examples of what the agency was looking for were a lease, a statement from the landlord or an affidavit. The request gave Petitioner until May 31 to respond.
4. Petitioner submitted a letter from the children's father on May 28, 2013 that indicated that he did not live at the residence as of May 27, 2013, that he was the landlord for Petitioner and that, effective June 1, 2013 she was paying \$1200 a month in rent and responsible for the gas and electric bill.
5. The agency did not find the May 28, 2013 letter from the father of Petitioner's children to be acceptable and on June 3, 2013 sent Petitioner a Notice of Decision that informed her that BadgerCare+ (BC+) had been discontinued effective May 31, 2013.

DISCUSSION

Before taking a negative action against a person's ongoing Medicaid benefits, the county agency or Department must issue timely, advanced, adequate written notice of the discontinuance. 42 C.F.R. 435.919(a) and 42 C.F.R. 431.210; *Goldberg v. Kelly*, 397 U.S. 254 (1970). In general, before a negative action is taken by a county agency, the agency must mail an adequate notice of the action **at least ten days** before the effective date of the action. 42 C.F.R. § 431.211; *Income Maintenance Manual*, II-G-2.2.0. Further, a request for verification must allow 10 days for response. *See BadgerCare+ Eligibility Handbook, Chapter 9, generally.*

Here the request for verification gave Petitioner just 8 days to respond. The discontinuance notice is dated **after** the discontinuance.

I am, therefore, ordering restoration of benefits. Then agency may decide to take this action again but must give proper notice.

Petitioner should be aware that a BC+ household consists of a primary person who is residing with his or her own child and must include a child under age 19 of the primary person and the co-parent of a primary person's child. *Id.* §2.2.1. Gross income is counted when determining BC+ eligibility. *BEH*, §16.1. While she argues that the father works in Canada most of the month, he does not have a separate household when back in West Bend. Further, she has not provided detailed information about his work schedule.

CONCLUSIONS OF LAW

That the agency has not given a legally adequate notice for the discontinuance of Petitioner's BadgerCare+.

THEREFORE, it is

ORDERED

That this appeal is remanded to the agency with instructions to restore Petitioner's BadgerCare+ backdated to June 1, 2013. This must be done within 10 days of the date of this Order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

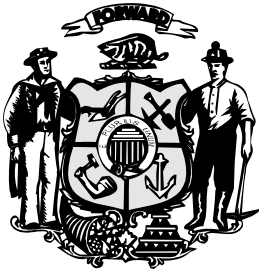
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of August, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 6, 2013.

Washington County Department of Social Services
Division of Health Care Access and Accountability